

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SARA ALLRED

V.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION

§
§
§
§
§

CASE NO. 4:08CV377
(Judge Schneider/Judge Mazzant)

**MEMORANDUM ADOPTING, IN PART, REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On December 10, 2009, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that the decision of the Administrative Law Judge be affirmed.

The Court, having made a *de novo* review of the objections raised by Plaintiff, and noting that the Commissioner did not file a response to Plaintiff's objections, finds as follows:

Plaintiff's first objection is that the Magistrate Judge erred in concluding the ALJ properly considered Plaintiff's impairments under Listing 1.02A. The Commissioner argues in his brief that the ALJ did consider Listing 1.02A. In the March 28, 2008 decision, the ALJ considered Plaintiff's arthritis under the requirements of Listing 1.01, Musculoskeletal Impairments (TR 43). Listing 1.02A is part of Listing 1.01. Although the ALJ is not required to list every section under Listing 1.01, the Court cannot determine whether the ALJ actually considered or evaluated Plaintiff's impairments under Listing 1.02A. The ALJ's decision is simply silent on this matter. Furthermore, the Commissioner's brief only addresses the question whether listing 1.02A was considered and provides for no support for why there is substantial evidence to support the decision. Since the

Court cannot re-weigh the evidence, remand is appropriate to determine whether Plaintiff meets or equals Listing 1.02A. Plaintiff's first objection should be sustained.

For the reasons set forth herein, the Court hereby adopts the findings and conclusions of the Magistrate Judge, in part, as the findings and conclusions of this Court. It is therefore

ORDERED that the case is **REMANDED** for further review pursuant to sentence four.

IT IS SO ORDERED.

SIGNED this 2nd day of February, 2010.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE